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IN THE

Supreme Court of the United States

October Term, 1967

No. 763

HOUSING AUTHORITY OF THE CITY OF LOS ANGELES, a body corporate and politic,

Petitioner,

vs.

HOWARD L. HOLTZENDORFF and BARBARA ROSIEN,

Respondents.

Reply Brief to Respondents' Brief in Opposition to Petition for a Writ of Certiorari.

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Introduction.

Following the Filing of the Petition for a Writ of Certiorari and designating the record in this action, Respondents procured a writ of execution from the trial court and in an attempt to enforce the judgment rendered, had a levy of execution made on funds received from low rent income. The depositary, Union Bank a California banking corporation thereafter filed an interpleader action to determine the ownership of the funds held, a copy of this complaint is attached as Appendix "A". The respondents filed their answer and claim to the funds a copy of which is attached as Appendix "B" and the Department of Housing and

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Urban Development and their designated officials filed their answer and cross claim a copy of which is set forth as Appendix "C".

These subsequent events more fully demonstrate the clear and impelling reasons why the writ should be granted.

ARGUMENT.

I.

The Question Presented Is One of a Federal Nature and Reviewable by This Court.

Respondents by their brief in opposition to this Petition for a Writ of Certiorari clearly indicate the fear that they have had from the inception of this litigation. Had the Public Housing Administration been joined as a party to the action, its rights and interest would preclude recovery by Respondents by reason of the Supremacy Clause of the United States Constitution, Federal Statute and Contract. Their success in leading the State Courts into erroneously concluding that the Public Housing Administration was not an indispensable party, that the State Courts need not apply applicable Federal Statues, nor consider stipulated interests of the Public Housing Administration does not preclude this Court from granting the requested Writ but offers the vary basis for doing so.

Petitioner under the heading "Reasons for Granting the Writ",[1]

The Opinion of the California Court of Appeal has placed Petitioner's present Board of Commissioners in

[1]Petition for a Writ of Certiorari, pages 15-16.

the untenable position of being charged with the payment of a judgment out of low rent housing authority funds over which they do not have control. The expenditure of these funds is subject to and under the control of the Public Housing Administration which has declared that the contracts in question were void and unenforceable and that no low rent funds could be used to discharge any such contractual obligations.

The California Court by not recognizing the interests of the Public Housing Administration and making it a party to this action, has created this impossible situation.

Subsequent to the filing of this Petition, the Department of Housing and Urban Development, Robert C. Weaver and Robert F. Johnson, officials of that Federal Agency, filed answers to the First Amended Complaint in Interpleader after the action had been removed to the U.S. District Court. There, the complaint was filed by the Union Bank, a California banking corporation, to determine rights and ownership of funds held by it after the Respondents attempted to enforce the judgment, subject of this proceeding, from funds in the Federally controlled bank and derived from receipts from the Federally assisted low rent housing projects, formerly operated by Petitioner. The First Amended Complaint in Interpleader, Respondents' Answer thereto and the Answer and Cross Claim of the Department of Housing and Urban Development and its officials, Robert C. Weaver and Robert F. Johnson, are reprinted as an appendix to this reply.

The issues joined in this companion litigation clearly substantiate the error made by the California Court of Appeal in holding that the PHA "had no justiciable interest of any kind" . . . " 'nor', any interest at all, let alone one that would be jeopardized by a judgment 'between the parties' ",[2] and the reason for granting the Writ.

The record before this Court fully discloses the duty imposed upon the Department of Housing and Urban Development and its predecessors to protect the lowest income groups from having local officials raid funds which have a direct bearing upon the amount of the rent to be charged them to maintain the low rent housing projects. When, as here, the Federal interest is brought to the attention of the State Courts, the failure to join the Federal Agency leaves such courts without jurisdiction to try the controversy. The issue raised herein is not one of abject theory but presents a situation where the Federal Agency was actually in possession, control and had paramount authority over the Local Authority prior to the commencement of the action.

The position taken by the Department of Housing and Urban Development in its Answer, aptly demonstrates the impossible situation which now exists as a result of the State Court's erroneous decision as set forth in the Petition for Writ.[3] If the present

[2]Decision of the California Court of Appeal, Appendix "A" of Petition for a Writ of Certiorari, pages 31 and 32.

[3]At page 16 of the Petition for a Writ of Certiorari, Petitioner posed the very problem that now exists stating:

"Enforcement of the California Court of Appeal decision in the present case necessarily conflicts with Federal statute and contract. Petitioner, acting through its Commissioners on the one hand, are required by this judgment to pay the

judgment is allowed to become final Petitioner on the one hand will be charged with the responsibility of satisfying a judgment rendered against it by the State Court and quite probably restrained from satisfying it by a Federal decision as contrary to Federal statute and authority.

II.

The Record Includes All Matters Necessary to a Ready and Adequate Understanding to the Points Made.

Respondents assert that because the court excluded the annual contributions contract with the Public Housing Authority from the evidence Petitioner is precluded from asserting its provisions in considering this Petition.

As fully set forth in the Petition this ruling of the State Courts is the very point relied upon by Petitioner. That contract was before both the trial court and the California Court of Appeal. The pertinent parts were quoted and set forth in the briefs of Petitioner and Respondents and are now in the record of this court. It is further noted that the subject matter and issues raised were the subject of Respondents' stipulation wherein the Federal interest was set forth. Respondents seek to avoid this stipulation upon the ground that the contract was excluded by the trial Judge which they should not be entitled to do.

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same through the use of Federally audited, controlled and possessed funds. To do so would require the Commissioners to act contrary to the determination of the Commissioner of the Public Housing Administration, its Federal Annual Contributions Contract, ad the use of funds over which they do not now or have ever had the ultimate right of control."

Further, as set out in the Petition the question of the joinder of the Public Housing Administration was a jurisdictional one that could be raised the first time on appeal. The quoted parts of the contract in the briefs made part of this record are sufficient to sustain the "Federal Interest" even without resort to Stipulation covering the subject.

It is respectfully submitted that the failure of the Federal Agency to seek to enter the litigation on the State Court level is immaterial to the issues presented by this Petition.

Respectfully submitted,

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